

# State of Colorado



**Bill Owens**  
*Governor*

**John Zakhem**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
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## Meeting Minutes August 15, 2006

The State Personnel Board met in public session on Tuesday, August 15, 2006, at the Colorado Department of Transportation, 202 Centennial Street, Glenwood Springs, Colorado 81601.

The meeting was called to order at approximately 10:00 a.m. Board Members Rich Djokic, Diedra Garcia, and John Zakhem were present in person. Board Member Donald J. Mares was present via teleconferencing.

Kristin F. Rozansky, Board Director, was present in person. Assistant Attorney General Pam Sanchez, Board Counsel, and Jane Sprague, General Professional III, were present via teleconferencing from the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 2, Denver, Colorado 80202-3604.

### **I. REQUESTS FOR RESIDENCY WAIVERS**

#### **A. August 1, 2006 Report on Residency Waivers**

Director Rozansky reported that there was a request for supplemental information on a Department of Corrections residency waiver request for five class series.

### **II. PENDING MATTERS**

#### **A. Pending Motions**

1. William Thomas Little v. Department of Corrections, State Personnel Board case number 2006B013.

Ms. Garcia moved to grant Complainant's Motion to Dismiss or Strike Respondent's Notice of Appeal of the Decision of the Administrative Law Judge. There was no second; thus, no vote was taken on the motion. Mr. Djokic then moved to deny

Complainant's Motion to Dismiss or Strike Respondent's Notice of Appeal of the Decision of the Administrative Law Judge. Mr. Mares seconded the motion. Upon discussion, Mr. Mares withdrew his second. Mr. Zakhem moved to grant Complainant's Motion to Dismiss or Strike Respondent's Notice of Appeal of the Decision of the Administrative Law Judge; to remand the matter to the Administrative Law Judge for an evidentiary hearing on the merits; to place a limitation on discovery (i.e., if full discovery on all issues has been conducted, then the hearing shall occur in 30 days; if more discovery is allowed to be conducted, then the hearing shall occur in 60 days); and based on the Board's findings, to deem that the May 25, 2006, Initial Decision of the Administrative Law Judge does not and can not constitute a final agency action or initial decision with a right of appeal as it does not render a final resolution of the matter upon which the Board could issue a Final Agency Order. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Ms. Garcia, Mr. Mares, and Mr. Zakhem.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. John K. Williams v. Regents of the University of Colorado, University of Colorado System Office, Procurement Services Center, State Personnel Board case number 2005B081.

Director Rozansky was recused from participation in the discussion of this matter. Board Counsel directed the discussions and answered questions for this case.

Mr. Mares moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Ms. Garcia, Mr. Mares, and Mr. Zakhem.

- B. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2003B127.

Mr. Djokic was recused from participation in the discussion of this matter.

Mr. Mares moved to adopt the findings of fact and the Order Awarding Attorney Fees and Costs of the Administrative Law Judge. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the

following Board members: Ms. Garcia, Mr. Mares, and Mr. Zakhem. Mr. Djokic abstained from voting.

#### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

- A. Matthew P. Valdez v. Department of Human Services, Division of Youth Corrections, Platte Valley Youth Service Center, State Personnel Board case number 2005B069.

Mr. Djokic moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Ms. Garcia, Mr. Mares, and Mr. Zakhem.

- B. Carol Denogean v. Department of Human Services, Pueblo Regional Center, Community Living for Developmentally Disabled, State Personnel Board case number 2006G063.

Ms. Garcia moved to reject the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. There was no second; thus, no vote was taken on the motion. Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Ms. Garcia, Mr. Mares, and Mr. Zakhem.

#### **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. Stephen Bullock v. Department of Human Services, State Personnel Board case number 2005B010 (July 20, 2006).
- B. Patrick Ward v. Department of Natural Resources, State Personnel Board case number 2004B143 (July 20, 2006).

The Board declined to take any action on its own motion in these matters.

#### **VI. REVIEW OF THE MINUTES FROM THE JUNE 20 AND JULY 18, 2006 PUBLIC MEETINGS OF THE STATE PERSONNEL BOARD**

Ms. Garcia moved to approve the minutes of the June 20, 2006 meeting as submitted. Mr. Mares seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia and Ms. Mares. Mr.

Zakhem abstained from voting, as he was not present at the meeting. Mr. Djokic abstained from voting, as he was not yet a member of the Board. (Two other Board members, Troy Eid and Elizabeth Salkind, who were present at this meeting, are no longer Board members.)

Mr. Djokic moved to approve the minutes of the July 18, 2006 meeting as submitted. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Mr. Mares, and Mr. Zakhem. Ms. Garcia abstained from voting as she was not present at the meeting.

## **VII. ACKNOWLEDGMENTS**

### **DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JULY 18, 2006 PUBLIC MEETING:**

- A. Jeanette Aragon v. Department of Corrections, San Carlos Correctional Facility, State Personnel Board case number 2003B223.

The Board voted to remand this matter to the Administrative Law Judge for a hearing on Complainant's claim for attorney fees and costs, in compliance with the Mandate of the Court of Appeals. The Board ordered that, in compliance with the Mandate from the Court of Appeals, the October 19, 2004 Order Denying Motions for Attorney Fees and Costs, Vacating June 1, 2004 Hearing, and Dismissing Appeal of the Administrative Law Judge is affirmed, to the extent to which it denies Complainant's request for an entry of judgment.

- B. Kimberly E. Temple v. Department of Revenue, Division of Gaming, State Personnel Board case number 2006G059.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. In addition to the grounds set forth in the denial of a hearing in the Preliminary Recommendation of the ALJ, the Board also finds that it lacks jurisdiction over Complainant's claim of defamation.

## **VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

There being no one present from the Director's office, no report was given.

## **IX. ADMINISTRATIVE MATTERS & COMMENTS**

- A. ADMINISTRATIVE MATTERS

- End of FY06 Budget Report and detailed Operating Expense Report

- Cases on Appeal to the Board and to Appellate Courts
- Web Site Statistics: April 2006 - 61,694; May 2006 - 75,594; June 2006 - 96,933
- Order Affirmed in Barron v. Department of Labor and Employment, Office of Field Operations, State Personnel Board case No. 2004B088, Court of Appeals No. 05CA0021
- Mandate/Order Affirmed in Cookson v. Department of Transportation, State Personnel Board case No. 2003G139, Court of Appeals No. 05CA1031

## B. OTHER BOARD BUSINESS

- Staff Activities

In addition to the above, Director Rozansky reported that there will be another rulemaking at the October 2006 meeting. In addition, the budget for the next fiscal year has been finalized and Board staff is working on a transition document for the incoming gubernatorial administration.

## C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

Mr. Zakhem expressed his gratitude to CDOT and its staff for their hospitality in hosting the August meeting and for expressing interest in the Board. He explained the roles of the Board in adjudication of cases and rulemaking. Several members of CDOT addressed the Board with comments, including a question about recruitment and retention.

At Mr. Zakhem's direction, Director Rozansky put together a Business Plan, which includes objectives for the next fiscal. Mr. Zakhem expressed that it was important to get Board members involved directly in outreach as ambassadors for the Board. Ms. Sanchez stated that she had concerns about one-on-one meetings between Board members and directors; however, Mr. Zakhem stated that he would continue the practice. He also stated that he thought paperless filing was a great goal for the Board and a Lexis-Nexis account could easily be set up. He suggested that Board members take a month to look at the Business Plan and come to the September meeting with suggestions, plans, and edits for the plan.

## X. PROPOSED LEGISLATION AND/OR RULEMAKING

The Board's Notice of Rulemaking was issued on June 16, 2006, and published in the Colorado Register on July 10, 2006. An Amended Notice of Rulemaking was issued on July 19, 2006, to change the time of the rulemaking hearing from

9:00 a.m. to 10:00 a.m. The proposed rules and the proposed statement of basis and purpose have been available for review at the Board office as well as on the Internet since July 21, 2006. Testimony and comments regarding proposed amendments to the Board Rules will be taken at this meeting. The public testimony and comment portion of the rulemaking hearing is open. The purpose of the Rulemaking proposed for August 15, 2006, is to adopt amendments to Board Rule 4-28 to comply with the recent decision from the Colorado Court of Appeals in *Denise Martinez v. Department of Personnel and Administration*, State Personnel Board case number 2003B118, Court of Appeals number 04CA1174. This rule is proposed for the general clarification for the public and efficient management of the Board.

Following Mr. Zakhem's introduction, the comment portion of the rulemaking hearing was commenced during which no comments or testimony were made, nor were any documents submitted for Board review. Mr. Zakhem closed the comment portion of the rulemaking hearing. He noted that no written comments were received by the Board regarding the proposed rule. Mr. Mares moved to amend the Board's current rule and permanently adopt the following amended proposed rule, and the accompanying statement of basis and purpose:

CHAPTER	SUBJECT
4-28	Adding the language, "in the current department," after the phrase, "or, if there is no existing vacancy in the previously certified class," and striking the last three words of the rule, "or administrative separation."

The specific authority of the State Personnel Board to promulgate these rules is found at Article XII, sections 13 and 14 of the Colorado Constitution; the State Personnel System Act, section 24-50-101, *et seq.*, C.R.S.; section 24-50.5-101, *et seq.* C.R.S.; sections 24-4-103, 105 and 106, C.R.S.; and *CAPE v. Lamm*, 677 P.2d 1350 (Colo. 1984).

The purpose for adopting and revising these rules is:

- The record of the rule making proceeding demonstrates the need for the rules.
- The proper statutory authority exists for the rules.
- To the extent practicable, the rules are clearly and simply stated so that their meaning will be understood by any party required to comply with the rules.
- The rules do not conflict with other provisions of the law. The duplication or overlapping of the rules, if any, has been explained by the Board.

Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Ms. Garcia, Mr. Mares, and Mr. Zakhem.

## **XI. EXECUTIVE SESSION**

### **A. Case Status Report**

- B. Minutes of the June 20, 2006 Executive Session
- C. Other Business

The meeting adjourned by consensus.

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**APPROVED THIS 19th DAY OF SEPTEMBER, 2006.**

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John Zakhem, Chair

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Rich Djokic, Member

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Diedra Garcia, Member

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Donald J. Mares, Member